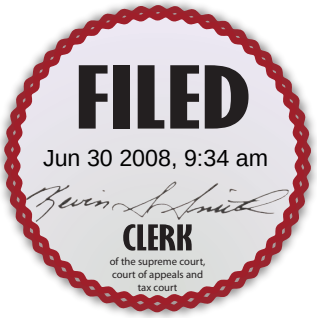

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF F.P., Minor Child, and	)	
T.S., Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 03A01-0801-JV-10
BARTHOLOMEW COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
The Hon. Heather H. Mollo, Juvenile Referee
Cause No. 03C01-0701-JT-4

June 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

T.S. appeals the termination of her parental rights to F.P. Because the evidence supports the court's findings and judgment, we affirm.

FACTS AND PROCEDURAL HISTORY

On April 4, 2005, T.S. took five-year-old F.P[1] to a house where T.S. could use crack cocaine while F.P. slept in the next room. A drug bust the following morning resulted in T.S.'s arrest and F.P.'s placement in foster care. On April 29, 2005, the Bartholomew County Department of Child Services ("DCS") filed a CHINS petition. Testimony revealed F.P.'s maternal grandmother, Diane Porter, had become her guardian on June 18, 2002. That guardianship was terminated after Porter failed to appear at the CHINS Initial Hearing. F.P. was made a ward of DCS on July 19, 2005. The dispositional order required T.S. to visit F.P. regularly, attend a psychological evaluation and follow recommendations, attend a substance abuse assessment and follow recommendations, abstain from drug use, submit to random drug tests, and obtain marital assessment and attend recommended counseling with her husband.

On July 29, 2005, T.S. was charged with Class D felony neglect of a dependent for having F.P. in the house where T.S. and three men were using crank. That same day, T.S. was charged with Class D felony theft for acts occurring in Kohl's Department Store on March 29, 2005, and Class D felony theft for stealing steaks from Kroger on April 12, 2005.

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[1] F.P. was born June 15, 1999. From December 1999 to February 2001, T.S. was incarcerated for check deception. From April 2003 to March 2004, T.S. was incarcerated for escape.

T.S. did not appear for case conferences on July 29, 2005, or August 25, 2005. As of August 25, 2005, she had not attended a substance abuse evaluation and had not submitted to urinalysis. T.S.'s husband reported she again was using crack cocaine. At a September 5, 2005 case conference, T.S. admitted using cocaine on August 30, but refused to attend inpatient treatment.

About October 2, 2005, T.S. was arrested for failing to appear in criminal court and remained in custody. In January of 2006, T.S. pled guilty to the neglect charge in exchange for the dismissal of the two theft charges. The court sentenced T.S. to three years, with one year suspended to probation, and ordered T.S. to obtain a substance abuse evaluation and follow any recommendation. In February 2006, while incarcerated, T.S. was evaluated for inpatient treatment at Amethyst House, but she was found inappropriate for that program.

T.S. remained incarcerated from October 2, 2005, until she was released to a "Community Transition Program" on July 20, 2006. (Pet. Ex 3 at 22.) The same day the criminal court released T.S. to community transition, the CHINS court informed T.S. that DCS was required to file a petition to terminate her parental rights because of the length of time F.P. had been out of her care.

After her release, T.S. was scheduled for weekly supervised visitation with F.P.; however, T.S. cancelled or shortened numerous visits. T.S. lived with friends or family during this time; because she did not obtain stable housing, she could not have visitation with F.P. at home. T.S. had a number of jobs in the fall of 2006, but she did not obtain stable employment.

Then, on December 18, 2006, T.S. was again arrested for failure to appear. This time she was released on bond. She admitted using cocaine on Christmas Eve and Christmas Day, and positive drug screens on December 28th and 29th indicated she used cocaine after Christmas.

On January 4, 2007, DCS filed a petition to terminate T.S.'s parental rights. On January 6, 2007, T.S. was arrested for driving while suspended. On January 23, the State filed a petition to revoke T.S.'s probation. Because there was a warrant out for her arrest, T.S. did not appear for the initial termination hearing on February 15, 2008. Two days later, T.S. was arrested and remained in jail until the probation revocation hearing on March 9, 2007. At that hearing the court ordered T.S. to serve the remaining year of her sentence.

The termination court heard evidence on June 26, 2007. Soon thereafter, F.P. was removed from her foster home due to physical abuse. T.S. requested a continuance of the hearing scheduled for July 26, 2007, but the court denied that request and heard the remaining evidence as scheduled. On November 27, 2007, the court entered an order terminating T.S.'s parental rights.

DISCUSSION AND DECISION

We have long had a highly deferential standard when reviewing terminations of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied* 822 N.E.2d 970 (Ind. 2004). Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the

judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied* 735 N.E.2d 226 (Ind. 2000), *cert. denied* 534 U.S. 1161 (2002). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To terminate a parent-child relationship, the State is required to allege and prove:

> (A) [o]ne (1) of the following exists:
>
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> * * * * *
>
> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and,
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). T.S. challenges the court's findings under elements (B) and (C).[2]

1. Reasonable Probability

When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied* 753 N.E.2d 12 (Ind. 2001). However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.*

Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied* 774 N.E.2d 515 (Ind. 2002). The court may also properly consider the services offered to a parent, and the parent's response to those services, as evidence of whether conditions will be

[2] Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, a trial court needs find by clear and convincing evidence only one of the two requirements of element (B): the conditions resulting in the child's removal and continued placement outside the home will not be remedied, or continuation of the parent-child relationship poses a threat to the child's well-being. *See L.S.*, 717 N.E.2d at 209. Accordingly, if we can affirm the court's finding under one of those provisions, we need not review the evidence supporting the other.

remedied. *Id.* A department of child services is not obliged to rule out all possibilities of change; it need establish only a reasonable probability a parent's behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied* 869 N.E.2d 456 (Ind. 2007).

Based on the evidence recited above, we cannot say the court erred in finding a reasonable probability T.S. would not remedy the problems that led to F.P.'s removal. T.S.'s history of relapse to cocaine use permits the inference of a reasonable probability T.S. will relapse after she is released from incarceration. T.S. was unwilling to attend drug counseling during the CHINS process. At the final hearing she claimed to be willing to receive help with parenting, substance abuse, and domestic violence, but her inability to consistently lead a law-abiding life resulted in her squandering the time she had during 2005, 2006, and 2007 to receive that help.

T.S. also asserts she should have been given more time like the father in *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied* 855 N.E.2d 1006 (Ind. 2006). Rowlett received over 1,100 hours of therapy while incarcerated, including assistance with drug abuse, parenting skills, and anger management. By contrast, T.S. had opportunities to obtain her required treatments when she was not incarcerated, but she declined the State's assistance until she again was

incarcerated after the termination petition was filed. Rowlett's children were with their grandmother, who was to adopt the children if Rowlett's rights were terminated, while T.S.'s daughter was in foster care because Porter, who had a guardianship over F.P. when the CHINS proceedings began, evidently permitted her guardianship to be terminated and did not come forward to request custody of F.P. until the last day of the final hearing.[3] Because F.P. was not in a stable placement and T.S. had not attempted to improve herself in the way Rowlett had, we cannot say the court erred in failing to give T.S. additional time.[4] *See, e.g.*, *In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (court will not put the children "on a shelf" until their parent is capable of caring for them).

2. Best Interest

In determining what is in the best interest of the child, the trial court must look beyond the factors identified by the Department of Child Services to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to

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[3] T.S. asserts the court told Porter on the last day of the final hearing to contact DCS about obtaining custody of F.P., but thereafter DCS told Porter, prior to finalization of the termination, that DCS could not help Porter because F.P. "would be adopted out." (Appellant's Br. at 21.) We first note the evidence underlying this argument is not properly part of the record before us on appeal, as it was not admitted at the trial court. Second, presuming the letters accurately portray Porter's interaction with DCS, we find nothing improper, in light of the evidence presented, in DCS's presumption that the court was going to terminate T.S.'s parental rights. If Porter wanted custody of F.P., she should have acted prior to the end of the final hearing or filed a petition to adopt.

[4] T.S. also claims the court erred when it failed to schedule "another hearing at some reasonable time after Mother was released from her obligations to Work Release." (Appellant's Br. at 21.) Mother did not cite authority supporting her allegation the court was required to have yet another final hearing, and such allegation is therefore waived. *See* Ind. Appellate Rule 46(A)(8). Waiver notwithstanding, the onus was not on the court to set another final hearing after Mother was released from prison; rather, the onus was on Mother – beginning with the CHINS proceedings – to avoid imprisonment. We see no error by to the court.

those of the children. *Id.* The recommendations of a caseworker and guardian ad litem ("GAL") that parental rights be terminated support a finding that termination is in the child's best interest. *Id.*

Mother asserts termination could not be in F.P.'s best interests because by the final hearing she finally had become willing and able to meet her parental responsibilities. T.S. did not demonstrate she was able to meet her parental responsibilities. She had not maintained sobriety or attended substance abuse treatment while she was out of jail in 2005 and 2006. She was employed and sober during work release, but there was no guarantee she would maintain either condition without supervision from the DOC.

At least three witnesses testified termination of T.S.'s parental rights would be in F.P.'s best interest because F.P. needed stability T.S. could not give her at time of the final hearing. In addition, T.S.'s past behavior suggested she would not be able to provide stability for F.P. after her release from prison. Under these circumstances, we see no error in the trial court's determination.

Therefore we affirm the judgment terminating T.S.'s parental rights to F.P.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.